

SENATE BILL 2540  
By Haynes

AN ACT to amend Tennessee Code Annotated, Title 34, relative to accounting of fiduciaries and guardians for wards.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 34-11-111(c)(1)(A), is amended by adding the language "certified by each financial institution or brokerage firm" after the word "information".

SECTION 2. Tennessee Code Annotated, Section 34-11-111(c)(2), is amended by deleting the subsection in its entirety and replacing it with the following language:

The ward has the right to have an independent, qualified physician prepare a written statement of restoration of competency if applicable. The accounting shall contain a written statement by a qualified physician licensed in the state of Tennessee, independently appointed by the court, attesting to the physical or mental condition of the disabled person. The statement shall demonstrate within a reasonable medical certainty to the court the need, or lack of need, for the continuation of the fiduciary's services. The court shall review all costs of preparation, execution and filing of the written statement, and shall disallow any costs the court finds excessive or unreasonable.

SECTION 3. Tennessee Code Annotated, Section 34-11-112 , is amended by adding the following language between the second and third sentences:

The court shall require a detailed itemized time and accounting affidavit to be filed with each motion for fees. Each petition for interim fees shall clearly and comprehensively state the reasons for filing. Any expense incurred for interim

fees by attorneys, filing fees or other document preparation costs, shall be borne by the fiduciary.

SECTION 4. Tennessee Code Annotated, Section 34-11-112, is further amended by designating the existing language as subsection (a) and by adding the following new subsection:

(b) The court may approve compensation to the fiduciary based on the percentage of income earned by the estate of the ward. If the court approves this method, compensation payable to fiduciaries shall be based upon services rendered and shall not exceed seven percent (7%) of the amount of moneys received during the period covered by the account; provided, however, the court may approve compensation of not to more than two hundred fifty dollars (\$250) per year in any case in which seven percent (7%) of the income is less than that amount and does not, in the opinion of the court, adequately compensate the fiduciary for the services rendered during the year. If the fiduciary or guardian performs extraordinary services, the court, upon petition and hearing thereon, may authorize reasonable additional compensation. No commission or compensation shall be allowed on the moneys or other assets received from a prior guardian or fiduciary, nor upon the principal amount received from liquidation of loans, or from other investments.

SECTION 5. Tennessee Code Annotated, Section 34-11-130, is amended by designating the existing language as subsection (a) and by adding the following subsections:

(b) The administrative office of the courts, in conjunction with representatives of the County Officials Association of Tennessee and the Tennessee Bar Association shall design a new accounting form which shall be substantially similar to the April 1991 version of the Veterans' Administration Form 27-4706.

(c) Beginning July 1, 1997, the clerk shall require the use of such new form.

SECTION 6. Tennessee Code Annotated, Section 34-11-131, is amended by adding the following language:

The clerk shall carefully and thoroughly review all documents filed with the accounting of the fiduciary, and detail in the report to the judge the manner in each instance where the costs to the ward could be reduced by the practices of the fiduciary.

SECTION 7. Tennessee Code Annotated, Section 34-12-103, is amended by adding the following language at the end of the section:

In determining what is in the best interests of the minor, the court shall consider those persons with financial and accounting experience with access to and knowledge of state programs available to the ward.

SECTION 8. Tennessee Code Annotated, Section 34-13-103, is amended by adding the following language at the end of the section:

In determining what is in the best interests of the disabled person, the court shall consider those persons with financial and accounting experience with access to and knowledge of state programs available to the ward.

SECTION 9. Tennessee Code Annotated, Title 34 Chapter 11, is amended by adding the following as a new section:

Section 34-11-~~.~~. No fiduciary, employee or family member of the fiduciary may be named as a beneficiary under the will of any current or previous ward under any circumstances after January 1, 1997.

SECTION 10. The provisions of this act are declared to be remedial in nature and all provisions of this act shall be liberally construed to effectuate its purposes.

SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it.